

**PUBLIC LAW BOARD NO. 7163
CASE NO. 388**

**LCAT No: 18-08286
BMWE File No. D70187718**

PARTIES)	BROTHERHOOD OF MAINTENANCE OF WAY
)	EMPLOYES DIVISION - IBT RAIL CONFERENCE
)	
TO)	VS.
)	
DISPUTE)	CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier’s discipline (dismissal) of Mr. C. Shapiro, by letter dated January 25, 2018, in connection with allegations that he violated CSX Transportation Operating Rules 104.10, 104.2 and 104.7 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File D70187718/18-08286 CSX).**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant C. Shapiro shall be returned to service immediately, his record cleared of the matter, with all rights and benefits unimpaired and compensated for all loss including straight time, overtime and other missed compensation.”**

FINDINGS:

The Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Carrier hired the Claimant on August 17, 2008. The Claimant's working hours are from 0700 to 1530 with a thirty (30) minute unpaid lunch. On October 12, 2017, the Claimant had scheduled a DOT physical examination at 0900 hours. The Claimant went directly to his physical examination instead of reporting to the job site. After his examination, the Claimant was traveling to his work assignment and took his lunch. At approximately, 11:30 a.m., the Claimant received an emergency phone call from home. The Claimant left without permission but later notified his supervisor. The Claimant claimed pay for work for 5 hours, from 0700 to 12:00 hours. The Claimant explained that he believed he was entitled to the extra time because the DOT physical was near the job site rather than his home.

The Carrier issued a Notice of Investigation letter dated October 19, 2017, which stated as follows "...to determine the facts and place your responsibility, if any, in connection with an incident that occurred at approximately 1200 hours, on October 12, 2017, in the vicinity of Waycross, Georgia, when you left work without the permission of a supervisor and claimed pay for work not performed and all circumstances related thereto..."

After some postponement, the investigation hearing was held on January 9, 2018. Following the investigation hearing, the Claimant received a Discipline Notice dated January 25, 2018, finding a violation of CSX Transportation Operating Rules 104.10, 104.2 and 104.7. The Claimant was dismissed. The Organization appealed the Carrier's decision by letter dated February 7, 2018, and the Carrier denied the same on May 19, 2018. The Organization responded on June 8, 2018. A formal conference was held with no change in the position of the Carrier on April 23, 2018. This matter is before this Board for a final resolution of the claim.

The Board has reviewed the record developed by the parties during their handling of the claim on the property, and considered evidence related to the following to make its determination of this claim:

- 1) Did Claimant receive a full and fair investigation with due notice of charges, opportunity to defend, and representation?
- 2) If so, did the Carrier establish by substantial evidence that Claimant was culpable of the charged misconduct or dereliction of duty?

- 3) If so, was the penalty imposed arbitrary, capricious, discriminatory, or unreasonably harsh in the facts and circumstances of the case?

The Carrier contends that the Claimant was afforded a fair and impartial hearing. The Carrier contends that the company has satisfied its burden of proof. The Claimant admitted that he left work early without permission and paid himself for time not worked. Moreover, the Carrier contends that the discipline was justified and assessed in accordance with the Carrier's policy. The cited charges are contained in Part III as a Major Offense, for which a single infraction, if proven guilty, can result in dismissal. The Organization argues that the Claimant was dishonest and stole time from the Carrier. It is the Carrier's position that the claim should be dismissed.

The Organization contends that the Claimant was denied a fair and impartial hearing and the Carrier failed to comply with Rule 25 of the Agreement. The Organization further contends that the Carrier failed to meet its burden of proof. The Claimant explained that he did not report to work before the physical but had full intentions of completing his workday, and in his opinion this was the customary practice when appointments were scheduled in the morning. The Organization argues that the Claimant did contact the supervisor to alert him that he had to leave early. The Organization asserts that the Claimant did not overcharge and only charged for his travel time to the medical exam, the time spent at the exam and his drive to the worksite. Further, the Organization contends that the discipline was arbitrary and unwarranted. There was no just cause to discipline. The Claimant is an eight (8) year employee with no prior discipline. It is the position of the Organization that the claim should be sustained and the Claimant be reinstated to the service.

The Carrier charged the Claimant with violation of CSX Transportation Rule CSX Transportation Operating Rules 104.10, 104.2 and 104.7. which read: Rule 104.2 Employee behavior must be respectful and courteous. Employees must not be any of the following:

- a. Dishonest, or
- b. Insubordinate, or
- c. Disloyal, or
- d. Quarrelsome.

Rule 104.7 reads:

Employees must have the permission of a supervisor to:

- a. Leave work before designated off-duty time,...

Rule 104.10.1 reads:

Pay must only be claimed:

1. For actual time or work performed.

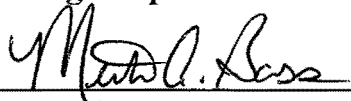
After carefully reviewing the transcript, testimony, exhibits and submissions, the Board finds that the Claimant did violate Rules 104.7 and 104.10.1. The Organization failed to meet its burden to establish a practice of allowing employees to go directly from their homes with pay as opposed to reporting to the job site and then from the job site to take the physical exam. There is insufficient evidence of record to support a finding of dishonesty. The Board does find that the penalty of dismissal is excessive in these circumstances. The penalty is modified to a time-served suspension with no impairment to rights and benefits.

AWARD

Claim sustained in accordance with these findings.

ORDER

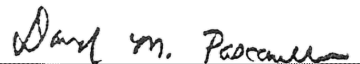
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Meeta A. Bass
Neutral



Katrina Donovan
Carrier Member



David Pascarella
Organization Member

Dated at Chicago, Illinois, this 26th day of NOV. 2019.